

Dying without a will in West Virginia

Personal Planning for the Future

Typically when someone dies, their possessions are given to the person or persons listed in their will. However, if a person dies without writing a will, their possessions will be divided up according to the laws of the state in which he/she lives. This is called intestate succession. Intestate succession is only followed if you do not have a will or if you did not include your valuable possessions in your will.



Spousal Elective Share

Regardless of what you put in your will, if you are married at the time of your death, a minimum amount of your possessions **MUST** go to your spouse. This is known as the spousal elective share. The amount of your possessions that your spouse receives depends on how long you have been married. Up to fifty percent of your estate will go to your spouse if you have been married for 15 years or more. In other words, you can disinherit your children but you cannot disinherit your spouse.

So what happens in West Virginia if someone dies without a will?

1. The surviving spouse (the spouse who is still alive) gets everything if the deceased spouse (the one who died) has no children. If there are children, the surviving spouse still gets everything if all of the children are the biological offspring of both the surviving and deceased spouses. In other words, the surviving spouse gets everything if there are no step-children from either the husband or wife's side.
2. The surviving spouse gets three fifths of all possessions if he or she has children from outside of the marriage, i.e. step children, AND has children from the marriage with the deceased spouse.
3. The surviving spouse gets half of the possessions if the deceased spouse has children who are not the biological offspring of the surviving spouse.



What happens if the deceased person is not married? Or if they are married, what happens to the rest of their stuff that did not go to their spouse?

In these cases, the possessions are:

1. Divided equally among the children of the deceased. If the deceased has no children, then,
2. The rest of the deceased's belongings will go to their parents. If they are dead, then,
3. The rest will go to the deceased's biological siblings. If the deceased does not have siblings, then,
4. The rest will go to the deceased's grandparents.

If a person who died does not have any of these relatives, or if no one claims their possessions, then the possessions go to the



state of West Virginia. Any real property, such as land, homes, and barns, passes to the state auditor (a state treasury employee) for public sale. The proceeds of this sale go to the state's general school fund. Any personal property, like jewelry, passes to the state treasurer for public sale. The proceeds of this sale go to the general revenue fund (a general fund for the state of West Virginia).

Resources

Legal Aid of West Virginia provides free advocacy services to West Virginians. They provide legal assistance, assistance for residents of long term care facilities, and services for individuals who live with behavioral health challenges. Legal Aid has 12 offices throughout the state. To find your local office, visit www.lawv.net or call **866-255-4370**.

West Virginia Senior Legal Aid is a non-profit legal aid organization focused on assisting older adults in legal issues. Their lawyers can help you write a will at a lower cost than private firms. Call West Virginia Senior Legal Aid at **800-229-5068** or visit www.seniorlegalaids.org.



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